

REMARKS

The Office Action dated December 27, 2006 has been carefully considered. The Examiner's objection to the Information Disclosure Statement is noted and copies of the foreign patent documents and non-patent publications will be filed separately.

The drawings have been objected to. Corrected drawings showing the reference character "W" and the reference number "110" are filed herewith. The Examiner also objected to the drawings based on the assertion that reference number "34" does not appear in the specification. However, this is incorrect. Reference number 34 appears at page 13, line 6.

The Examiner objected to the abstract as being in excess of 150 words. The abstract has been cancelled and a substitute abstract supplied by the present amendment.

Applicant has cancelled claim 9 which removes the possibility of a rejection of that claim on the ground of double patenting.

Claims 1-5, 7-8 and 10-13 have been rejected as unpatentable over Kuslich in view of Wedeen. Applicant acknowledges that Kuslich discloses a band for treatment of spinal discs of the type contemplated by Applicant. However, Kuslich does not disclose or suggest a structure comprising the elongate member recited in the rejected claims. In recognition of this, the Examiner has cited Wedeen which discloses a wire placement device which is designed to assist in the passage of a wire around a bone. The Wedeen device relies on its S-shaped configuration to enable it to place the wire.

It is respectfully submitted that Wedeen cannot be properly combined with Kuslich. The Kuslich publication is directed only to the treatment of spinal discs and does not involve the use of a wire. The Wedeen device is directed only to the placement of wire around bones using an S-shaped delivery device. Wedeen contains no disclosure or suggestion that his device could be used to locate anything around a spinal disc and the S-shaped configuration of Wedeen would cause concern with regard to possibly causing damage to tissue surrounding the spine. More importantly, there can be no doubt that, but for applicant's disclosure, it would not occur to one skilled in the art to combine the device of Kuslich in some unknown manner with the device of Wedeen. The two references are

totally unrelated and there is absolutely no suggestion or motivation for a person skilled in the art to try to combine them.

Accordingly, in light of the present amendments to the drawings, to the abstract and to the claims, by reason of the cancellation of claim 9, it is believed that this application is in condition for allowance. A favorable action is respectfully solicited.

The Commissioner is authorized to charge any additional fees required by the filing of these papers, and to credit any overpayment to Orrick Herrington & Sutcliffe's Deposit Account No. **150665**.

Dated: March 21, 2007

Respectfully submitted,

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